

## TERMS AND CONDITIONS OF SALE OF GOODS, SOFTWARE AND SERVICES

### 1 Application

- 1.1 These terms and conditions of sale ("**Terms**") are applicable to all (a) sale of Goods, (b) license of Software and/or (c) provision of Services by Datamars in favor of the Customer ("**Goods and Services**"). Any general and/or specific terms and conditions of the Customer are hereby expressly excluded. These Terms shall apply to the Goods and/or Services, as the case may be.
- 1.2 Datamars reserves the right, at any time and at its sole discretion, to make any amendment to the Terms. In those cases, Datamars shall notify the Customer of the amendments to the Terms by a prior written notice of 30 (thirty) days before their entry into force. Within the same 30 (thirty) days period, the Customer shall accept the amended Terms or raise any objections it may have by sending written communication via email to Datamars. If during this period, the Customer does not object to the changes, the new amended Terms shall be considered accepted by the Customer.
- 1.3 These Terms shall override and supersede any Customer terms, or any (previous) negotiations, agreements or arrangements between Datamars and Customer, unless otherwise agreed specifically in writing between the parties. In case of a conflict between the terms of a separate agreement and these Terms, the terms as specifically agreed in the separate agreement shall prevail.
- 1.4 These Terms are effective between Datamars and the Customer as of the date of acceptance by Datamars of the Order (as *infra* defined) placed by the Customer pursuant to Article 2.
- 1.5 In these Terms:
  - a. "**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used in this definition, "control" means the power to direct the management or affairs of an entity and "ownership" means the ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity;
  - b. "**Datamars ABC Policy**" means Datamars Anti-Bribery and Corruption Policy adopted by Datamars and attached in the **Annex 1.5 – Compliance Documents**, as the same may be amended, modified or supplemented from time to time.
  - c. "**Customer**" means the individual, company or other entity which purchases Goods and/or Services from Datamars.
  - d. "**Confidential Information**" means collectively, (i) the technical specifications, (ii) any other information, whether commercial or otherwise, concerning Datamars or any of its affiliates' materials, products, processes, services and activities, supplied and/or disclosed, in any form, by and/or on behalf of Datamars to the Customer and/or which the Customer becomes aware of in connection with the performance of these Terms, (iii) any and all designs, drawings, inventions, technology, data, information, results, methods, specifications, know-how, software, still or filmed images and photographs, products and moulds devised, produced and/or developed and/or supplied by Datamars or any of its affiliates as a result of development of the Goods and/or in the performance of the Services and/or simply in connection with the execution of the these Terms, (iv) any note, study or other document prepared by Datamars or any of its affiliates which contains or otherwise reflects technical specifications, the information mentioned in point (i) and (ii).
  - e. "**Confirmed Order**" means an Order request accepted by Datamars and binding on the parties in accordance with Article 2.2.

- f. **“Datamars”** means Datamars SA or or its Affiliate, as applicable. For clarity, unless otherwise specified in the Order or these Terms, the Datamars entity contracting with Customer or the Customer Affiliate.
- g. **“Datamars Code of Conduct”** means Datamars Code of Conduct for Third Parties adopted by Datamars and as attached in the **Annex 1.5 – Compliance Documents**, as the same may be amended, modified or supplemented from time to time.
- h. **“Datamars’ Intellectual Property Rights”** means all intellectual and industrial property rights and interests including any patents, trademarks, logos, distinctive signs, copyrights and software, programmes and codes (including the Software as defined below), whether registered or unregistered, developed by and, in any case, belonging to Datamars, as well as any information and know-how related to the methods and techniques of conception, development, realization and manufacture of the Goods.
- i. **“Goods”** mean the goods sold and supplied by Datamars to the Customer and better identified in the relevant Confirmed Order, under these Terms.
- j. **“Legal Compliance”** means rules, policies and processes that regulate business practice of Datamars and are better described under the Article 5.2.
- k. **“Order”** means a written request for the purchase of Goods and/or Services issued by the Customer to Datamars in conformity to the requirements set out in the Article 2 below.
- l. **“Relevant Incoterms”** means, Incoterms 2020 as indicated in each Confirmed Order.
- m. **“Services”** means the services which Datamars is to provide to the Customer in accordance with these Terms, as may be better identified in the Order;
- n. **“Software”** means the software and programmes and subsequent versions of improvements, better identified in the relevant Confirmed Order, related to and/or integrated in the Goods and Services provided, and owned by Datamars and licensed under these Terms.
- o. **“Datamars Trade Control Policy”** means Datamars’ trade control policy adopted by the latter and that complies with all applicable laws and regulations including all EU, U.S., U.K. and other non-U.S. Laws relating to export and re-export control laws, import laws, economic sanctions laws, and all other applicable export control, import and sanctions laws in other countries in which Datamars conducts business, and which is attached in the **Annex 1.5 – Compliance Documents**, as the same may be amended, modified or supplemented from time to time.

## 2 Orders

- 2.1 **Order Requests.** If the Customer wishes to purchase Goods and/or obtain the provision of Services, it shall place an Order with Datamars. All Orders shall include:
- Identification of the Goods and/or Services subject of each single Order;
  - Quantities, features and delivery terms of the required Goods or Services;
  - Prices in compliance with Datamars’ price list as per Article 3.1 of these Terms;
  - Any specific purchase conditions, also in derogation of this Terms as specified in the Article 1.3
- 2.2 **Acceptance.** Orders are subject to acceptance and confirmation by Datamars, in its sole discretion. Acceptance or rejection of an Order by Datamars shall be provided in writing (including communication by e-mail). Unless previously agreed in writing, these Terms shall be incorporated into each Order as if set out in full in the Order. In addition, Datamars may attach a copy of these Terms or the reference link to the to the Confirmed Order from Datamars to the Customer. Once Datamars’ Confirmed Order is received by the Customer, the Order shall be binding upon the parties and shall be regulated by these Terms, unless otherwise agreed in writing by the parties. In

the event of any discrepancy between the Confirmed Order and these Terms, the Confirmed Order shall prevail.

- 2.3 The Customer shall be entitled to amend or cancel the Order already placed with Datamars by written communication to Datamars setting out the reference number of the Order to be cancelled or amended and as the case may be, the relevant amendments, it being understood that such cancellation or amendment shall be deemed as effective only to the extent it is received and accepted in writing by Datamars before the Order becomes binding on the parties pursuant to Article 2.2 above.

### **3 Price and supply**

- 3.1 **Price.** The prices charged by Datamars for sale of Goods and Services, including for licensed Software, shall be those set out in Datamars' price list as notified to the Customer before the date of the relevant Confirmed Order and recorded on the written Confirmed Order issued by Datamars to the Customer pursuant to Article 2.2 (the "**Price**"). The Customer shall pay the Price, plus any duty, levies, taxes, charges related thereto, in accordance with Article 4.
- 3.2 **Supply.** The Goods will be supplied in accordance with the Relevant Incoterms, which terms include (without limitation) provisions as to the method of delivery, insurance obligations and point at which risk in the Goods passes to the Customer. Dates and times for delivery of Goods are given as estimates only. If no dates are specified in the relevant Confirmed Order or separate agreement, delivery will be within a reasonable time. While Datamars will use all reasonable endeavors to meet any estimate, it reserves the right to amend any estimate. Datamars will deliver the Goods in such batches or instalments, as it considers expedient. Neither failure by Datamars to deliver one or more batches or instalments, nor over or under delivery shall entitle the Customer to reject these Goods or subsequent deliveries, claim compensation or terminate these Terms or any agreement and the Customer shall pay for such Goods.
- 3.3 **Inspection of the Goods.** The Customer shall have a period of thirty (30) days following the receipt of the Goods to inspect them ("Inspection Period"). The Goods will be deemed accepted at the end of the Inspection Period unless the Customer notifies Datamars in writing within 8 (eight) business days of any nonconforming Goods and furnishes Datamars with written evidence or other documentation reasonably required by Datamars. In case of properly documented nonconforming Goods notified by the Customer to Datamars within such term, Datamars shall, following possible inspections it deems required, and in its sole discretion, (i) replace the Goods, at no charge to the Customer or (ii) refund the price paid by the Customer for the related Goods. To the extent permitted under applicable laws, any claim notice for nonconforming Goods notified beyond the Inspection Period will be inadmissible and Datamars shall not be liable for the nonconformity in the Goods.

### **4 Terms of payment**

- 4.1 **Payment.** Payment of the Price is to be made in the currency of the invoice issued by Datamars, unless otherwise agreed between the parties. The Customer agrees to pay Datamars for Confirmed Orders by electronic transfer in cleared funds to the bank account set out in the Confirmed Order or otherwise notified in writing by Datamars for this purpose. The Prices set out in the Confirmed Order confirmation sent by Datamars to the Customer are fixed and binding in connection with the Goods and/or Services purchased by the Customer through the Confirmed Order.
- 4.2 Unless otherwise agreed in writing, the Customer shall pay the purchase Price within the payment terms indicated in the Confirmed Order or in the invoice issued by Datamars. Without prejudice to any other right of Datamars, Datamars shall have the right to (i) **require the Customer to provide Datamars's with a bank guarantee, Letter of Credit or any other payment security (to be established at Datamars' discretion)**, (ii) **suspend performance of the Confirmed Oder, or (iii)**

**cancel the Confirmed Order, if it reasonably believes that the Customer will not, or will be unable to make the relevant payment in whole or in part.**

- 4.3 **No deductions or set-off.** The Customer agrees that it is not entitled to withhold payment or to make any deduction from any payment due to Datamars or claim any set-off without Datamars' prior written consent.
- 4.4 **Default interest.** Without limitation to Datamars' other rights or remedies under applicable law or the confirmed Order or these Terms, if any payment becomes overdue (except for amounts then under reasonable and good faith dispute) default interest shall automatically be due by the Customer at the rate of five percent (5%) of the outstanding balance per annum of the total amount due by the Customer (or the maximum rate permitted by law, whichever is lower) from the date such payment was due until the date of actual payment, unless Customer proves that it is not at fault. The Customer shall on demand pay to Datamars all costs (including legal or other professional costs) incurred by Datamars in collecting or attempting to collect any overdue payments. Payment of the default interest shall not release the Customer from compliance with its obligations under the Confirmed Order or these Terms.
- 4.5 **Payment in arrears.** Datamars may refuse to deliver Goods and/or may discontinue the license of Software and/or the provision of Services, in respect of the relevant Confirmed Order, if payment of any sums owing to Datamars by the Customer is in arrears.

## **5 Customer's obligations**

- 5.1 The Customer shall be obliged to carefully follow all instructions provided by Datamars in the guidelines, manuals, instructions with respect to the Goods and the Services. The Customer shall also ensure that all its personnel involved in use of Goods and Services follow such guidelines, manuals and instructions, as well as any other Datamars' instructions regarding their operation, cleaning, maintenance, servicing, adjustments, etc.
- 5.2 The Customer represents and warrants that it will comply (and will ensure that its affiliates, sub-contractors and other personnel comply) with all relevant Anti-Corruption Laws, including any related policy or code adopted and maintained by Datamars that applies to its business, that include but are not limited to Datamars Code of Conduct, Datamars ABC Policy and Datamars Trade Control Policy.
- 5.3 If the delivery of Goods and/or Services under these Terms is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Datamars may suspend its obligations and Customer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively. In the event that an application for such license is delayed or rejected, or the duration of such restriction and/or prohibition exceeds 6 (six) months, Datamars may terminate the Confirmed Order related to such Goods and/or Services, without incurring any liability towards the Customer.

## **6 Warranties regarding Goods and Software**

- 6.1 The Customer acknowledges and agrees that duplication, copying, reproduction of technology or manufacturing methods related to the Goods are not permitted and, thus, the Customer undertakes that it shall not duplicate, copy, reproduce the technology or manufacturing methods related to the Goods and the Software.
- 6.2 The Customer shall not improve, modify or add new parts to the Goods. Under no circumstances and at no time shall the Customer carry out any work that may affect the operation and the (physical, if appropriate) condition of the Goods. The Customer shall be solely responsible for the

damage and consequences of any alterations and modifications made to the Goods, as well as any malfunctions of the Goods due to changes made by the Customer on its own.

- 6.3 **Remote Monitoring of the Goods.** If required by Datamars and to the extent applicable, the Customer acknowledges that Datamars shall be entitled to remotely monitor the operation of the Goods.
- 6.4 **Goods manufactured in accordance with specifications.** Datamars warrants that at the time of delivery, the Goods sold to the Customer will comply in all material respects with the relevant specifications for the Goods notified by Datamars to the Customer in writing and will be free from faulty material or workmanship. Except as provided in this Article 6, Datamars gives no warranty or undertaking and makes no representation, express or implied, regarding the Goods, including without limitation with regard to the merchantability or fitness of the Goods for a particular purpose.
- 6.5 **Goods' warranties and defects.** Datamars' warranty contained in this Article 6 shall start at the time of the delivery of the Goods and shall remain in full force (i) for 12 (twelve) months thereafter, or (ii) for such other longer period that the Datamars normally provides for each respective Goods, specified in the Datamars's operating manual of the Goods (particularly in the respective data sheet, specification sheet, product brochure, and the like) or (iii) a longer period agreed upon in writing after the Goods are delivered, (iv) or otherwise specified by Datamars in separate written product warranty accompanying the Goods or specified in the applicable Goods price list (in which case such other product warranty term shall control),.The Customer shall give Datamars properly documented written notice of any failure of any Good to comply with the warranty set out in Article 6 within 8 (eight) days of the date on which the non-compliance is detected and shall return, if so confirmed by Datamars, the defective or non-complying Goods to Datamars' premises for inspection and testing. Datamars shall, in its sole discretion, either:
- (a) repair or replace the defective or non-complying Goods in question at its own cost and expense; or
  - (b) refund the Customer the invoice price of those Goods.

Datamars' liability, in any case, is limited to what provided is for 6.5 (a) and 6.5 (b) by above.

If the Customer does not notify Datamars of such failure within the time specified in this Article 6.5, Datamars shall not be liable for any such failure of the Goods. The foregoing is the Customers only rights and remedies with respect to any defective and/or non-conforming Goods and for breach of the foregoing warranty and Datamars sole liability.

- 6.6 **Reading Systems.** For the sake of clarity, it is hereby understood that, with exclusive reference to the reading systems, in case of repair of the defective or non-complying Goods, Datamars' warranty, unless otherwise agreed between the parties in writing, under this Article 6 shall cover spare parts and labor, while any costs in connection with the travelling and lodging of Datamars' employees or technicians shall be borne by the Customer. Likewise, in the event, the defective or non-complying reading systems are to be shipped to Datamars for repair or replacement, then the shipping cost from Customer to Datamars shall be borne by the Customer, whereas Datamars shall bear any costs for shipping the repaired or replaced Goods back to the Customer.
- 6.7 Warranties set out in Article 6 shall not cover any non-conformity, defect or damage which may be

caused, or partly caused by, or arise through:

- (a) failure on the part of the Customer to correctly set up, apply, fit, use, carry or store the Goods in accordance with any instructions, guidelines or manuals provided by Datamars;
- (b) failure on the part of the Customer to properly maintain the Goods;
- (c) use of the Goods for purposes other than those for which the Goods are made;
- (d) continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.

6.8 Warranties set out in Article 7 shall also not apply in case:

- (a) replacement parts or materials not manufactured or approved by Datamars have been used on any the Goods; or
- (b) modifications have been made to the Goods whether by the Customer or by third parties, without the express prior consent in writing of Datamars;
- (c) damage or loss is in any other way attributable to the Customer, or to any conduct of the Customer not in accordance with the Terms.

## **7 Warranties regarding Software**

- 7.1 The Customer acknowledges that the Software is covered by patents, patent rights, copyrights, technical information and know-how, which are and shall remain the exclusive property of Datamars. The Customer acknowledges and agrees that it is granted with the non-exclusive and non-transferable right to use the Software in unchanged form and only for the purposes stated in these Terms, in the relevant guidelines, manuals or instructions, as the case may be. The Customer undertakes to use the Software licensed by Datamars only in connection with (a) the operation of the Goods and (b) the Services. Any other use or exploitation of the Software is expressly prohibited.
- 7.2 The Customer acknowledges and agrees that duplication, copying, reproduction, improvement, modification of and/or additions to the Software are not permitted and, thus, the Customer specifically agrees not to— and shall not —: (i) resell, sublicense, lease, time-share or otherwise make the Software (including any documentation) available to any third party (except as provided under these Terms); (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Software or the data contained therein; (iii) bypass or try to bypass the technical protection measures or the technical restrictions applied to the Software and/or to the platform for the purpose of identifying any code and/or algorithm whatsoever (by way of example without limitations, any source code and object code); (iv) analyse, decrypt, decompile, disassemble and/or reverse engineer, in whole or in part, the Software or try to put in place said activities; (v) alter, modify and/or process in any whatsoever the Software; (vi) retrieve, copy, duplicate, retain and/or collect, directly or indirectly, manually or through the use of specific software, any data, information, code and/or algorithm of any kind whatsoever, used by or to operate the Software and the Goods and/or loaded and contained into it (so-called *data scraping*).
- 7.3 The Customer shall not use the Software in any way that may allow the duplication, creation of derivative works or elaborations or the distribution to third parties of material covered by Datamars Intellectual Property Rights, nor access the Software for the purpose of building a competitive product or service or copying its features or user interface.
- 7.4 Under no circumstances and at no time shall the Customer carry out any work that may affect the operation and the condition of the Software. The Customer shall be solely responsible for (a) any non-conformity, defect, malfunctions or damage and related consequences due to any alterations,



or modifications made to the Software by Customer on its own, as well as to (b) any uses of the Software by Customer in breach of what stated in this Article 7.

- 7.5 **Remote monitoring of Software.** If required by Datamars and to the extent applicable, the Customer acknowledges that Datamars shall be entitled to remotely monitor the operation of the Software and the relevant collection of data, and any action by the Customer to prevent such monitoring and collection shall be deemed a material breach of the Terms.
- 7.6 Except as provided in this Article 7, Datamars gives no warranty or undertaking and makes no representation regarding the Software, including – for instance, but not limited to – warranties regarding data back-up, data restoration in case of disaster recovery, security of data, data transmission, suitability of the Software for the Customer's specific purposes and its adaptability to the Customer's business reality and activities (which are the sole responsibility of the Customers), absence of interruptions and errors, proper functionality of internet network services and the Customer's IT structures in general (which are not controlled by Datamars).
- 7.7 Warranties set out in Article 7 shall not cover any non-conformity, defect or damage which may be caused, or partly caused by, or arise through:
- (a) failure on the part of the Customer to correctly set up, apply, fit, use, carry or store the Software in accordance with any instructions, guidelines or manuals provided by Datamars; or
  - (b) failure on the part of the Customer to properly maintain the Software; or
  - (c) use of any of the Software for purposes other than those for which the Goods and/or the Software are made.
  - (d) continued use of any Software after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.
- 7.8 Warranties set out in Article 7 shall also not apply in case:
- (a) modifications have been made to any of the Software, also by third parties, without the express prior consent in writing of Datamars;
  - (b) damage or loss is in any other way attributable to the Customer, or to any conduct of the Customer not in accordance with the Terms.

## **8 Warranties regarding Services**

- 8.1 Datamars warrants that the Services provided to the Customer will be duly performed by Datamars in accordance with the provisions of the relevant Confirmed Order.
- 8.2 In the event that Services are not performed in accordance with the provisions of the relevant Confirmed Order, Datamars may elect to: (a) re-perform the Services i or (b) refund of the relevant Price paid by the Customer. This shall not apply in the event that Datamars failure to reasonably

perform such Services is due to any act or omission by Customer or any person other than Datamars.

- 8.3 The Customer will give Datamars written notice of any failure to provide any of the Services in compliance with the warranty set out in Article 8.1 within 8 (eight) days from the date on which such failure occurred.
- 8.4 If Datamars re-performs the Services or refund the Price in accordance with the provisions of Article 8.1 above, the Customer shall not be entitled to any other compensation.
- 8.5 The above warranty for Services is exclusive and in lieu of any other warranty (written or verbal, express or implied). Datamars does not provide any warranty of any kind except as stated in this Article 8.

## **9 Limitation of Liability**

- 9.1 To the maximum extent permitted under applicable laws, the liability of Datamars shall limited to the provisions set out in the Articles 6, 7 and 8 (to the repair or replacement of the specific Goods and/or Software or reperformance of Services or the refund of the relevant Price paid by the Customer at the election of Datamars). Datamars shall not be liable for any special, indirect, incidental or consequential damages incurred by the Customer of any kind whatsoever in relation to the Goods, Software and/or the Services, such as, for example, loss of profits, loss of data, consequential damages, reduction in turnover and loss of chances or business opportunities.
- 9.2 TO THE EXTENT PERMITTED UNDER THE APPLICABLE LAWS, IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL DATAMARS OF ITS AFFILIATS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY GENERAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, BREACH OF SECURITY, OR LOST OR DAMAGED DATA, DAMAGE TO NETWORKS, EQUIPMENT OR HARDWARE, OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECNOLOGY) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, THE LICENSED SOFTWARE, OR ANY SERVICES RENDERED BY DATAMARS, EVEN IF DATAMARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF DATAMARS TO CUSTOMER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE LIMITED TO COMPENSATION OF DIRECT DAMAGE NOT GREATER THAN THE AMOUNT OF THE ORDERS ACCTUALLY PAID BY THE CUSTOMER AND INVOICED BY DATAMARS FOR THE GOODS AND SERVICES IN THE LAST TWELVE 12 MONTHS IMMEDIATELY PRECEDING THE DATE WHEN THE LIABILITY AROSE. NOTHING IN THIS AGREEMENT SHALL, HOWEVER, LIMIT OR EXCLUDE EITHER THE LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS GROS NEGLIGENCE OR WILFUL CONDUCT OR (B) ANY LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.
- 9.3 **No representations by Datamars.** Datamars will not make any representation of or give any guarantee, warranty or other undertaking in relation to the Goods, Software and/or the Services unless that representation, guarantee, warranty or undertaking is provided by Datamars in writing. No other representation, guarantee, warranty or undertaking is intended not to be provided by Datamars and the Customer shall not rely on any unwritten representation, guarantee, warranty or undertaking.

## **10 Intellectual property**

- 10.1 The Customer acknowledges that the Goods and the Software are covered by patents, patent rights, copyrights, technical information and know-how, which are and shall remain the exclusive property of Datamars and form part of Datamars's Intellectual Property Rights.
- 10.2 Except for the license of the Software granted to the Customer under these Terms, the Customer acknowledges that, neither the Customer nor anyone it is responsible for, has, or will acquire, any



right, title or interest in Datamars' Intellectual Property Rights (including any intellectual property rights in the Goods, Services and/or Software), and neither these Terms nor the Customer's use of Datamars' Goods, Services and/or Software shall imply any transfers of any title or ownership of Datamars' Intellectual Property Rights to the Customer. The Customer acknowledges and agrees that Datamars is and shall remain the sole and exclusive owner of any existing Datamars' Intellectual Property Rights of any kind.

- 10.3 Subject these Terms, Datamars grants to the Customer a worldwide, royalty-free, non-exclusive, time-limited, non-transferable (except to a successor in interest as permitted hereunder), limited license to access and/or use (as applicable) the Software during the term in the quantities of licenses specified in the Confirmed Order and subject to any limitations set forth in the corresponding applicable quote, solely for the Customer's own internal business purposes. The Customer may authorize subcontractors to access and/or use the Software, subject to the number of licenses authorized by Datamars, provided Customer is liable for all acts and omissions of the subcontractors.
- 10.4 The Customer acknowledges and agrees that Datamars is and shall remain the sole and exclusive owner of the Software and of any existing intellectual property right of any kind whatsoever thereto and/or relating thereto. In the event that the Customer, in using the Goods, the Software and/or the Services, comes in contact with or becomes aware in any way whatsoever of source codes, object codes and/or algorithms for the operation of the Goods and/or the Software, with reference to the same, it shall fulfil the same confidentiality obligations set forth in Article 14 hereof. This obligation continues after the expiration, termination of or withdrawal from these Terms for any reason whatsoever.
- 10.5 The Customer undertakes not to dispute Datamars' exclusive title ownership of Datamars' Intellectual Property Rights to the Goods, the Services and the Software, and undertakes not to take any action that may affect or otherwise be prejudicial to Datamars' title ownership of such intellectual property rights also in case of expiration, termination of or withdrawal from these Terms for any reason whatsoever.

## **11 Force majeure**

- 11.1 **No liability for delay.** Neither party shall be liable for any delay or failure to perform its obligations under these Terms (except for an obligation to pay monies) if such delay or failure is due to any circumstances beyond the reasonable control of the party claiming suspension, which prevents, hinders or interferes with the performance by the party claiming suspension of its obligations under these Terms, including, without limitation, an act of God, fire, earthquake, flood, lightning, explosion, epidemic, pandemic, act of government or state, war, act of terrorism, civil commotion, insurrection, embargo, sabotage, shortages of, prevention from or hindrance in obtaining any raw materials, energy or other supplies ("**Force Majeure**").
- 11.2 **Parties to give notice of Force Majeure.** If either party is unable to perform its duties and obligations under these Terms due to Force Majeure, such party shall give prompt written notice to the other. Such notice shall state the nature and expected duration of Force Majeure and the obligation affected by such Force Majeure.
- 11.3 **Parties to use reasonable endeavors.** During the continuance of such Force Majeure, the obligation affected by Force Majeure shall be suspended, but the party whose obligation is so affected shall take all reasonable steps to resume performance of its obligations without delay on termination of the event of Force Majeure.
- 11.4 **Termination.** If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 (thirty) days or any different term as expressly agreed upon between the Parties, either party may terminate any Confirmed Order for Goods and/or Services affected by such Force

Majeure immediately on notice in writing to the other party. Any advanced payment made in execution of the confirmed Order shall be returned.

## **12 Termination**

Without prejudice to any other rights and remedies of the Datamars, Datamars shall be entitled to terminate the confirmed Orders or any other agreement with the Customer, suspend further deliveries of Goods or Software or performance of Services to the Customer and stop Goods in transit forthwith upon the occurrence of any of the following events:

- (i) for any reason or no reason upon 90 (ninety) days' written notice at any time;
- (ii) the Customer commits any breach of these Terms and (a) fails to remedy such breach (if remediable) 30 (thirty) days from the date on which Datamars notified the Customer that such breach occurred, or (b) with immediate effect in case of irremediable breach, in particular, but not limited to, the breach of the Customers' obligations under Article 5.2;
- (iii) with an immediate effect if the Customer becomes or is likely to become bankrupt, insolvent or unable to pay its debts to any third party, or sells all or substantially all of its assets to a third party, in the reasonable opinion of the Datamars;
- (iv) With an immediate effect in any event the Customer is subject to any change in direct or indirect control, or
- (v) with immediate effect in accordance with Article 16.6(f).

## **13 Personal data**

- 13.1 Each party may under no circumstances use personal data relating in particular to the employees of the other party, or its service providers or its own customers or prospects for purposes other than those of carrying out the object of any accepted Order and/or these Terms.
- 13.2 Each party is responsible for its own processing of personal data in accordance with the national regulations applicable to each Party. In this regard, the Parties mutually agree that Datamars is subject to the Swiss Federal Law on Data Protection (LDP) and that this law benefits from the Decision of the EU Commission of 26 July 2000 on establishing the adequacy of the protection of personal data in relation to European law (document C (2000) 2304). It is understood that, where applicable, Datamars will comply with other laws and regulations regarding the protection of personal data such as the Regulation (UE) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR – General Data Protection Regulation).
- 13.3 As part of their contractual relations, the parties undertake to comply with legal and regulatory obligations with regard to the processing of personal data, according to their intervention and their respective roles.
- 13.4 Datamars undertakes to diligently comply with all the provisions of the Swiss Federal Data Protection Act (LDP), in particular with regard to the security and confidentiality of personal data. On request, Datamars undertakes, within the limits of applicable law, at all times, to permanently erase any personal data communicated by Client, giving written confirmation.
- 13.5 Datamars may process personal data only within the strict framework of the object of any accepted Order and these Terms. Personal data may not be the subject of any operation, other than those provided for under the object of the accepted Order and of these Terms, on the part of any person acting under the authority of Datamars. The Parties will comply with the **Annex 13.5 - Privacy Notice** which is addendum to these Terms, as the same may be amended, modified or supplemented from time to time.
- 13.6 The parties will regulate their respective privacy roles and responsibilities pursuant to the Swiss

Federal Law on Data Protection (LDP), the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR – General Data Protection Regulation) or other applicable laws and regulations regarding the protection of personal data.

## **14 Confidentiality**

- 14.1 The Customer shall treat, and shall ensure that all its directors, employees, attorneys, auditors, collaborators and advisors treat, all information, including any design, specification, project, document, technical data, connected with the Goods, Services and Software, business information and any information which it may have become acquainted in connection with the performance of the Confirmed Order and these Terms as confidential and shall not disclose them to any third party without Datamars prior written consent or use them for any purpose except where authorized to do so by Datamars.
- 14.2 Upon Datamars's request and, in any case, upon termination of a contract, the Customers shall return to Datamars all documents, files and correspondence submitted by the Datamars as confidential or otherwise covered by any Datamars's intellectual property right. Notwithstanding the foregoing, the Customer may retain a single archival copy exclusively to the extent required by applicable law and the obligations to delete or destroy shall not apply to computer records and files which have been created pursuant to general automatic electronic archiving or IT back-up procedures and which are not readily accessible or used for any purpose other than archiving or back-up.
- 14.3 The Customer acknowledges and consents that Datamars is entitled (but not obliged) to store, use and exploit any data (including information relating to an animal's performance, health, meat quality and genetic makeup), usage data, statistics, however collected and/or processed through the Goods, Services and/or Software for its own purposes. Datamars purposes include, but are not limited to, share such data with other third parties, use such data for machine learning purposes.

## **15 Changes**

- 15.1 Datamars reserves the right to modify or discontinue the production of any or all of the Goods and/or the Software at any time and at its sole discretion. Datamars shall provide reasonable notice, if feasible, of such changes to the Customer.

## **16 Miscellaneous**

- 16.1 **Severability.** In the event of the invalidity of any part or provision of these Terms such invalidity does not affect the enforceability of any other part of these Terms.
- 16.2 **Assignment by Datamars.** Neither Party may assign any of its rights or obligations under these Terms or any Confirmed Order without the prior written consent of the other Party. Such consent shall not be unreasonably withheld, provided that Datamars can assign to any of its Affiliates, or to an acquirer of a controlling interest, or all or substantially all of the assets of a Party without the consent of the Customer.
- 16.3 **Insurance.** Without prejudice to Customer's liability under these Terms, Customer undertakes to have and to maintain during the term of these Terms a valid and adequate third-party liability insurance policy with an insured amount suitable to the amount of the business of Customer, covering its potential liability hereunder and deliver it, as well as the documentation proving its renewal, to Datamars.
- 16.4 **No waiver.** The failure by Datamars at any time to:
- (a) enforce or insist upon the strict observance of any provisions of or any right in respect of or the remedying of any breach or non-performance of these Terms; or
  - (b) exercise any election or discretion under these Terms,

or any delay in doing any of the foregoing, does not operate as a waiver of those matters or of any of the rights of Datamars under these Terms. A waiver is only effective if in writing. Any effective waiver provided will not constitute a waiver of any subsequent or continuing right, remedy, election, discretion or power

#### 16.5 Datamars Entities

The Datamars entity entering into these Terms and Confirmed Order depends on the entity that sells the Products and Services and/or on the place of residence of the Customer at the time of execution of the Terms, as the case may be.

#### 16.6 ABC and Trade Control Policy

Customer shall comply with all applicable anti-bribery and anti-corruption laws and regulations including, but not limited to: (i) local and national laws in the territories in which it operates, the U.S. Foreign Corrupt Practices Act of 1979, the UK Bribery Act of 2010, (ii) and other Swiss applicable anti-bribery and anti-corruption laws (collectively, "Anti-Corruption Laws"), and all applicable economic sanctions; (iii) export, import, reexport, and transfer controls; (iv) and anti-boycott laws and regulations including, without limitation, economic and financial sanctions administered by the European Union and any relevant European Union Member State, HM Treasury of the United Kingdom, and the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"), and the Export Administration Regulations administered by the U.S. Department of Commerce, Bureau of Industry and Security (subparagraphs (ii) to (iv) collectively, "Trade Controls").

Each Party shall maintain in effect policies and procedures designed to ensure its respective compliance with all applicable Anti-Corruption laws, Trade Controls. Furthermore, Customer will comply with Datamars Code of Conduct, ABC Policy and Trade Policy attached to these Terms.

**Customer hereby acknowledges and agrees that it shall not, directly or indirectly:**

- a) engage in any conduct on Datamars's behalf in violation of, or potentially in
- b) violation of the applicable Anti-Corruption Laws or Trade Controls, or
- c) take any action that would implicate Datamars in a violation or potential
- d) violation of applicable Anti-Corruption Laws or Trade Controls.

The Customer represents that neither the Customer itself, nor any of its owners, officers, directors, employees, agents, representatives, sub-contractors, or consultants is designated on any applicable U.S., EU, or other relevant export- or sanctions-related restricted party list, including OFAC's List of Specially Designated Nationals and Blocked Persons and the EU consolidated list of financial sanctions targets, or in the aggregate owned or controlled, directly or indirectly, greater than 50% by any such person or entity designated on any applicable U.S. or non-U.S. restricted party list.

The Customer agrees that neither it nor any of its owners, officers, directors, employees, agents, representatives, sub-contractors, or consultants will, with respect to any activities undertaken relating to these Terms:

- a) offer, promise or give any financial or other advantage to any person with the intention of influencing a person (who need not be the recipient of the advantage) to perform his or her function improperly, or where the acceptance of such advantage would itself be in proper;
- b) request, agree to receive or accept any financial or other advantage where this would be improper or likely to influence the recipient in the performance of his or her role; or
- c) offer, promise or give any financial or other advantage to any government official (or to any other person at the request of, or with the acquiescence of, a government official) with the intention of (i) influencing any act or decision of such government official in his or her official capacity; (ii) inducing such government official to do or omit to do any act

in violation of the lawful duty of such official; (iii) securing any improper advantage; or (iv) inducing such government official to use his or her influence with the government or instrumentality thereof to effect or influence any act or decision of the government or such instrumentality.

Upon request of Datamars, the Customer shall participate in any training or compliance program that Datamars may require.

Datamars shall have the right to terminate these Terms upon any breach of this Article 16.6 (which shall be determined by Datamars in its sole discretion), with immediate effect by sending a written notification without any indemnification being due and without any obligations towards the Customer and the Customer agrees to indemnify and hold harmless Datamars for any such breach.

- 16.7 **Language.** The language of these Terms and of any accepted Order and the transactions envisaged by it is English and all relevant notices, demands, requests, statements, certificates or other documents or communications shall be in English unless otherwise agreed by the parties or required by the applicable law or government authorities. Should the accepted Order of these Terms be agreed to be executed in more than one language, the English version shall prevail and be the official text.
- 16.8 **Governing Law and Jurisdiction**
- 16.9 **Governing law.** Unless otherwise agreed in writing between the parties in relation to each Datamars contracting entity, this Agreement shall be governed, construed, and enforced in accordance with the laws of Switzerland.
- 16.10 Any dispute, controversy or claim arising out of, or in relation to, any accepted Order and/or these Terms, including the validity, invalidity, breach, or termination thereof, shall be submitted to the exclusive jurisdiction of the Court of Zurich. The language to be used in the proceedings shall be English
- 16.11 Should the Customer be identified as a consumer pursuant any local applicable laws, all relevant mandatory laws and regulations shall apply and, in case of conflict, prevail over these Terms.
- 16.12 The Provisions of Vienna Convention on the International Sale of Goods dated April 11, 1980, shall not apply to these Terms.

## ANNEX 1.5 - COMPLIANCE DOCUMENTS

### Datamars Code of Conduct



DC004311 CoC.pdf

### Datamars ABC Policy



DC003004 ABC  
Policy\_2022.11.21.pdf

### Datamars Trade Policy



DC004291 Trade  
Policy\_2022.11.21.pdf

## ANNEX 13.5 - PRIVACY POLICY



Privacy Notice  
T&Cs\_2022.12.19.pdf